THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 26234 of 2006

O r d e r:

Assailing the award dated 03.08.2006, passed by the Labour Court-Visakhapatnam, in I.D. No. 83 of 2003, published in G.O. Rt. No. 2119, dated 10.10.2006, the petitioner filed the present writ petition.

The petitioner was appointed as Conductor in the respondent-APSRTC in the year 1991. On 28.10.2000, while the petitioner was conducting the bus on route No.60-B, a check was exercised, and the checking officials having found certain cash and ticket irregularities, issued charge memo to the petitioner. The petitioner submitted his explanation to the charge memo. Dissatisfied with the explanation, the respondent-Corporation placed the petitioner under suspension, and a charge sheet was issued. The Enquiry Officer, who conducted enquiry into the charges leveled against the petitioner, submitted report holding that the charges are proved. Based on the enquiry report, the 2nd respondent, namely the Depot Manager, vide proceedings dated 14.02.2001 issued notice to the petitioner, calling upon him to show cause as to why he should not be removed from service. The petitioner submitted his explanation thereto on 23.02.2001. However, vide proceedings dated 01.03.2001, the 2nd respondent removed the petitioner from service. Assailing the order of removal, the petitioner preferred an appeal before the appellate authority, which was dismissed. Thereafter, he raised an industrial dispute in I.D. No. 83 of 2003 before the Labour Court, which by award dated 03.08.2006, published in G.O. Rt. No. 2119, dated 10.10.2006, dismissed the same, upholding the orders of the disciplinary authority. Assailing the said award and notification, the petitioner filed the present writ petition.

The learned counsel for the petitioner submitted that the petitioner did not commit any cash and ticket irregularities, and since the bus was overloaded, the petitioner could not observe and collect money from two passengers and when checking staff entered the bus, those two passengers, who have not taken the tickets, in order to save

themselves, have shown two old tickets with them. He further submitted that the Labour Court without properly appreciating the statements of the passengers erred in confirming the order passed by the disciplinary authority, and at any rate, he contended that the punishment of removal from service imposed on the petitioner is disproportionate to the proved charges. He thus prayed that the impugned order be set aside and the petitioner be reinstated into service with full backwages.

On the other hand, the learned Standing Counsel for respondent No.2-APSRTC submitted that the petitioner committed serious cash and ticket irregularities, and the charges leveled against the petitioner were held proved by the Enquiry Officer in the departmental enquiry, and based on the enquiry report, the disciplinary authority imposed punishment of removal from service on the petitioner, which was confirmed by the Labour Court. Having regard to the nature of the proved charges, the punishment of removal from service, cannot be said to be disproportionate, warranting interference therewith by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. He thus prayed that the writ petition be dismissed.

Heard the learned counsel for the petitioner and the learned Standing Counsel for respondent No.2-APSRTC and perused the award of the Labour Court.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India to issue a writ of certiorari are limited to – firstly to correct errors of jurisdiction when the inferior Court or Tribunal acts without jurisdiction or in excess or fails to exercise it, secondly correct errors of law apparent on the face of the record, and thirdly correct and interfere with the findings that are base on suspicion, conjectures or surmises or no reason. It is within these parameters, the award of the Labour Court has to be examined.

As can be seen from the award of the Labour Court, the domestic enquiry conducted by the respondent-APSRTC is held valid, by order of the Labour Court dated 20.06.2006. The petitioner was charge sheeted alleging that he failed to observe the rule “Issue and Start” and that he, having collected Rs.6/- from two passengers, issued tickets of Rs.3/- each, which were unconnected with his way bill, and he also failed to remit the TPT amount of Rs.6/- at the depot together with bus cash. These charges leveled against the petitioner, stood

proved in the departmental enquiry. The disciplinary authority, considering the nature of the proved charges, imposed punishment of removal from service. The Labour Court, upon analyzing the evidence before it, and the statements of the passengers and the petitioner coupled with the unchallenged evidence of the TTIs and the inconsistent stand taken by the petitioner, found that the petitioner committed cash and ticket irregularities intentionally, and accordingly held that the punishment of removal from service imposed by the disciplinary authority is proportionate to the proved charges, and I see no reason whatsoever to interfere therewith, more so when the charges leveled against the petitioner stood proved in the departmental enquiry and when the petitioner failed to point out any infirmities in the departmental enquiry.

In **Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane**[1], the apex Court held that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the appellate tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. On the question of quantum of punishment, the apex Court held as follows:

> Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration.

In the instant case, the charges leveled against the petitioner stood proved, and having regard to the gravity and seriousness of the proved charges, the 2nd respondent-Depot Manager having lost confidence in the petitioner, removed him from service. In such circumstances, I am of the considered opinion that no interference is called for with the impugned award passed by the Labour Court, which upheld the punishment of removal from service imposed on the petitioner by the disciplinary authority.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: 29th October, 2007.

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[1] (2005) 3 SCC 254